Bail Slip

The Appellant/Accused - 3 viz., S.Parthasarathy was directed to be released on Bail as per the order of this Court dated 19.04.2000 and made in Crl.M.P.No.10206/99 in Crl.A.No.957 of 1999.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-01-2007

CORAM

THE HONOURABLE MR.JUSTICE R.REGUPATHI

Crl. Appeal No.957 of 1999

S.Parthasarathy .. Appellant/A3

Versus

State rep. By
Central Crime Branch,
Egmore, Chennai-8. .. Respondent/Complainant

For Appellant : Mr.K.Asokan Senior Counsel for
Mr.M.Nirmal Kumar

For Respondent : Mr.N.Kumanan
Government Advocate

PRAYER: Appeal against the judgment dated 27.10.1999 in C,C.No.1/98 on the file of the Special Judge under TNPID Act, Chennai.

J U D G M E N T

The appellant is the 3rd accused, in the case, among three accused. The appellant was working as a marketing manager in the first accused firm. The second accused is the proprietor of the first accused firm.

2. It is the case of the prosecution that deposits have been collected from the public, by promising that interests will be paid at the rate of 24% per annum. Deposits to the tune of Rs.12,94,600/- have been collected and the same was not returned. It is the further case of the prosecution that though interests were paid initially, the cheques given for the return of the money got bounced, resulting in the registration of the case.

3. The prosecution examined 36 witnesses, including the depositors and marked 327 exhibits. Those documents including, the deposit receipts, payment vouchers, cheques and return memos, communications between the depositors and the firm have also been marked as exhibits.

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4. Though the charges have been framed under Sections 120(b) r/w 420, 409 and 109 IPC and under Section 5 of TNPID Act, the conviction has been made under Section 420 IPC and 5 of TNPID Act. The second and third accused, namely the appellant was sentenced to undergo rigorous imprisonment for 3 years and 10 years each respectively and to pay a fine of Rs.50,000/- and Rs.1,00,000/- each respectively with a default sentence. Aggrieved against the conviction and sentence, the present appeal has been preferred only by A-3. The second accused was absent at the time of judgment and still he is absconding. An appeal has not been preferred on behalf of the second accused.

5. Learned counsel appearing for the appellant submits that some of the witnesses have stated that the appellant accompanied A-2 for convincing the depositors and some of the witnesses have stated that on behalf of the second accused, the appellant canvassed for the deposits. In none of the Fixed Deposit receipts (FDRs), the appellant has signed and in all the deposits, it is only the second accused, who is the proprietor of the first accused firm, has signed. Ex.P-196 and Ex.P-212 are the letters sent to the respective depositors, after the cheques have been dishonoured. It is submitted that though it has been signed by the appellant in his capacity as a marketing manager, the communication has been sent only in the name of the first accused firm. It is further submitted that the appellant worked only as an employee of the firm and it is not the case of the prosecution that the appellant also has taken the money deposited with the firm.

6. Learned counsel appearing for the appellant submits that during the course of investigation, properties in the name of the second appellant, was attached and the value of the same would be Rs.20 lakhs. It is the prosecution allegation that deposits have been collected to the tune of Rs.12,94,600/-.

7. Per contra the learned Government Advocate submits that the appellant worked as marketing manager and almost all the witnesses implicate the appellant as the person, who has collected the money from them on behalf of the firm and in such circumstances, as per Section 5 of TNPID Act, the appellant also must be made equally liable along with the second accused.

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8. I have perused the materials available on record and heard the submissions made.

9. Learned trial Judge at para-54 of the judgment stated that there is no acceptable proof to substantiate criminal conspiracy. Therefore, the accused have been acquitted for the offence under Sections 120(b) and 109 IPC.

10. As per Section 5 of TNPID Act, the person responsible for the management of the affairs of the financial establishment shall be punished. In the instant case, though the appellant was working as a marketing manager, on a perusal of the materials available on record, it

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appears that on instructions from A-2, the appellant has taken care of the marketing aspect of the financial institution and he has not taken any active role for the management of the affairs of the financial establishment.

11. Admittedly, A-1 firm is a proprietory concern, of which, A-2 is the sole proprietor. All the receipts have been signed only by A-2 and the communications sent in the name of the company has been signed only by A-2. As there is no positive evidence to connect the appellant with the second accused, the trial Court has rightly acquitted the appellant for offence under Sections 120B and 109 IPC.

12. To substantiate the offence under Section 420 IPC also, dishonest intention at the inception stage itself, by each of the accused, must be proved. In the instant case, the appellant, while collecting the deposit for the firm of the second accused, may not know about the intention of the main accused. There is every possibility to presume that the financial institution will be continued by the second accused in a genuine manner and the appellant would have entertained a bonafide impression that interests will be paid and the amounts in deposit may be repaid. The letters Ex.P-196 and Ex.P-212 reflects only such knowledge of the appellant, while intimating the depositors that interests would be paid to them.

13. On a perusal of the evidence of the investigating officer, I find that proceedings has been initiated under Section 7 of the Act for attachment of the property and such proceedings are pending in O.S.No.1 of 1997. None of the properties in attachment, is in the name of the appellant, but the properties are in the name of the second accused. The appellant has not been taken as one of the party in the proceedings.

14. In such circumstances, since the appellant was working as an employee of the first accused firm, I am of the view that he is not primarily responsible for the management of the affairs of the first accused firm. P.W.28 was working as marketing executive, like the appellant for a short period of two months and she has been taken as a witness in the case. Though the main accused in the case, namely A-2 is absconding, his properties are in attachment and the proceedings are pending.

15. On a perusal of the materials available on record, I do not find any material to substantiate the offence under Section 420 IPC against the appellant. Therefore, the conviction imposed on the appellant for the offence under Section 420 IPC is set aside and accordingly is acquitted. However, the appellant in his capacity as a marketing manager was involved in the collection of deposits along with the second accused. Under Section 5 of the Act, a minimum sentence is not prescribed.

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16. Learned Government Advocate submits that though fine imposed is not paid the appellant has already undergone the imprisonment of 5 months and 22 days, pending appeal. In view of the facts and circumstances of the case, while confirming the conviction under Section 5 of the TNPID Act the sentence of 10 years imposed is set aside and I am of the view that the sentence already undergone by the appellant would be sufficient. Accordingly, the sentence imposed on the appellant is reduced to one of period already undergone and the fine imposed is set aside. The appeal is disposed of accordingly.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csh

To

1. The Special Judge under TNPID Act,
Chennai.

2. The Inspector of Police,
Central Crime Branch,
Egmore, Chennai-8.

3. The Superintendent,
Central Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.M.Nirmal Kumar, Advocate, SR.3375.

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AVA(CO)
RVL 14.02.2007

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